IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.31 OF 1992.

Maharashtra State Road Transport
Corporation : Appellants.

versus

Smt.Kanchan Daulat Luthriya
& ors. : Respondents.

Mr.G.S.Hegade for the appellants.
Mr.Ganesh S. Vaidya for Respondent Nos. 1 & 2.

CORAM : D.G.DESHPANDE,J.

DATED : 11th April 2005.

ORAL ORDER

1. Heard Mr.Hegade for the appellants and Mr.Vaidya for the respondents. This appeal is filed by the Maharashtra State Road Transport Corporation challenging the order of the Motor Accident Claims Tribunal Raigad at Alibag dated

13th February 1991 awarding compensation of Rs.2,92,200/- with costs and interest at the rate of 12% p.a.

2. The accident occurred on 10th April 1984 when deceased Daulat was proceeding to Bombay on the motor scooter along with his friend Rajaram Valavalkar. One S.T. truck loaded with goods bearing No.MHQ 6543 of the appellants dashed against the motorcycle near village Ainghar on Bombay Goa National Highway. Daulat died on the spot. He was aged about 30 years. He was the proprietor of M/s.Narendra Caterers and Decorators and, therefore, in that background, the claim petition came to be filed. The tribunal, after appreciating the evidence and documents on record, held that the driver of the S.T. truck was fully negligent and liable and, awarded compensation as stated above. The appeal challenges both these findings viz. negligence of S.T. driver and quantum and, alternatively, according to Mr.Hegade it was the case of contributory negligence that S.T. became liable to the extent of 60% and deceased being liable to the extent of 40%.

3. So far as actual accident is concerned, the claimants examined one witness Bipin Mamtora. He has stated that on 8.4.84 he himself along with Harshad, Bharat, Tushar, Daulat, and Pramod alias Shankar went on scooter to Ganpati Pule. On 10-4-84, they started from Ganpati Pule at 10 to 10.30 a.m. They reached near Sukere Khind. On one scooter the witness along with Harshad was sitting and witness was driving. On other scooter Daulat and Pramod were there and Daulat was driving and, on the third scooter Bharat and Tushar were there and Bharat was driving. All the scooter were being driven at a speed of 30 to 35 k.m. per hour. They were on left side of the tar road and, the width of the road at about 22 ft to 23 ft. with kaccha road at about five ft on either side of the tar road. Then according to this witness Bipin, when they came within the limits of village Ainghar, the accident took place. A truck with its face on Goa side halted on the Goa side of the phata and, the passengers started getting down from that truck and, at that juncture the truck of the appellant came from behind i.e. Bombay side. It was in high speed.

The S.T. bus over took the stationary truck from the right side and it thus came on the wrong side and dashed against the scooter of Daulat which was ahead of the witness. The S.T. driver did not apply the breaks and, therefore, the front side right portion of the S.T. dashed against the scooter. The impact was violent. Thereafter the S.T. driver applied breaks but the bus did not stop . It dragged the scooter backward up to a distance of 40 to 50 feet. The scooter was entangled with the bumper and hence the S.T. bus driver swerved the bus to the left and stopped. In the cross examination the witness has stated that the head lamp of the S.T. bus was damaged and the tin portion of the right side was teared. A suggestion was put to him that the scooteriest i.e. Daulat while overtaking the truck went on the wrong side and dashed against the S.T. bus.

. The claimants also examined one Bharat - the friend of deceased Daulat who was on the third scooter. But he has not stated anything about the manner in which the accident took place because this witness Bharat was driving the first scooter in sequence as stated by the earlier witness Bipin. Therefore, he is not a witness of

actual incident.

4. As against this evidence of the claimants, the appellants examined Rama the driver of the S.T.. He has stated that on 10.4.84 he started from Mahad at 10.00 a.m. and reached Pen at about 1.30 to 1.45 p.m.. He loaded the material there and started at about 5 p.m.. He reached Ainghar. One truck came from the opposite direction. A scooter was following the truck. The scooteriest overtook the truck, suddenly without giving any signal and in that process dashed against the diesel tank portion of his truck. In the cross examination he admitted that the width of the road was 22 feet and there was a kaccha road on either side, that was a straight road; he could see the vehicle coming from a distance; he saw the truck for the first time at the distance of 100 ft and, he saw the scooter for the first time when he overtook the other truck. He admitted that he was prosecuted for this accident in Roha Court and he was fined in that case in this connection.

5. Mr.Hegade, appearing for the appellants, on the basis of this evidence, contended that if the six young men were travelling by three scooters and all of them in holiday mood, then it was proper to presume that they were in high speed and the accident occurred not because of the negligence of the driver of the S.T. truck but because of the negligence of Daulat or, at any rate, it was a case of contributory negligence.

6. The tribunal held that if the road was straight and there were only two vehicles, as stated by the driver, then the said driver was in a position to see the scooter. There was, therefore, no possibility of Daulat taking his scooter suddenly from behind the truck in order to overtake the same. The Court found that the story given by the witnesses of the claimants appeared more probable in the circumstances.

7. The panchanama of scene of offence is there on record. It is at Exhibit 31/C. The spot of the accident was shown to the police by the witness-cum-S.T.driver Shriram, though, he has in his cross examination denied or refused to

have shown the spot or being present at the time of panchanama. In the panchanama it is noted that Mumbai-Gao road at that place is straight; the accident took place 8 ft. away from western side border and at that spot the accelerator cable with handle was found broken; 12 ft to the north thereof belt of writ watch was found; there the pieces of brain were found; there were marks of scooter being dragged; the body of Daulat was found at a distance of 64 ft to the north from the spot of dash; many parts of the scooter were lying in between; the scooter was completely damaged and all the parts were scattered on the road; 14 ft. away from the spot of accident or dash the wrist watch with broken glass of the deceased was lying in drainage; S.T. truck was standing at a distance of 67 ft. from the point of dash; on the front side of the S.T. there was scratches at a height of 1 ft. 7 inches and black colour of the rubber of the handle of scooter had left its marks on that iron sheet of S.T.. The panchanama records all the minute details and it is skillfully drawn.

8. Therefore, from the panchanama it will be

clear that the scooter of Daulat and Daulat was dragged up to the distance of more than 50 ft. and the S.T. could stopped at the distance of 64 ft. This itself is a clear indication of high speed in which the S.T. was going. Mr.Hegade, however, contended that if it was a highway, then vehicle was bound to be in high speed. I do not find that this argument can be accepted in the circumstances of the case. If Rama - the driver of S.T. had seen the stationary truck, covering almost 1/3rd or 1/2 portion of the road; then at that juncture he should have reduced the speed so that he could control his vehicle at any given time. But the driver of the S.T. had not taken any care in this regard, as a result of which, this accident occurred killing Daulat on the spot. The conclusions arrived at by the tribunal that the driver of S.T. was fully responsible are, therefore, fully justified and they are not required to be interfered with.

9. So far as quantum of compensation is concerned, deceased Daulat was the sole proprietor of M/s. Narendra Caterers and Decorators. He was keeping all the materials in Parsi Colony, Dadar and was paying rent of

Rs.3,000/- to Rs.4,000/- per annum for those premises. The income of Daulat, as stated by his wife Kanchan, was Rs.10,000/- to 15,000/- in the year 1981-82 and Rs.18,000/- to Rs.20,000/- in 1983-84 and, in 1981-82 he was giving Rs.1,000/- to Rs.1,200/- per month for household expenses. In 1983-84 he was giving Rs.1,200/- to Rs.1,500/- per month. He was 32 years of age. He had no vices. He used to take his meals in home and in 1982-83 he had paid income tax. In the background of this evidence, the tribunal took Rs.1,200/- per month as contribution of deceased Daulat to the family i.e. dependency factor and, multiplier of 18 was applied and, the figure of Rs.2,92,200/- was arrived at in which Rs.25000/- were added as loss of business; Rs.3000/- as ambulance expenses and; Rs.5000/- towards loss of consortium to the wife.

10. Mr.Hegade for the appellants, therefore, contended that multiplier of 18 was not proper in the circumstances. There was no basis to take Rs.1,200/- per month as contribution to the family and, once the compensation is awarded, there was no propriety and necessity of awarding Rs.25,000/- towards loss of business. He also

contended that wife Kanchan stated in her evidence that though she had discontinued the business of catering, she was continued in the business of decoration with the help of labourers. Therefore, according to Mr.Hegade, the family was earning substantially from the said business even after the death of Daulat and, therefore, considering all these facts, the compensation is at higher side.

11. As against this, the counsel for the respondents/claimants urged that if deceased Daulat was 30 to 32 years of age, then expectancy of life up to 75 years of the age was properly held by the tribunal and, therefore, multiplier of 18 was properly applied. Further, if Daulat had no vices, then his contribution of Rs.1,200/- per month in spite of evidence of the wife that he was contributing more in 1984-85 was proper. He also stated that as the income from the business grew more and more, Daulat's contribution to the family also increased as stated by the wife and, if Daulat was doing two businesses of catering and decoration, then business cannot be said to be excessive.

12. I find considerable force in the submissions made by the counsel for the respondents/claimants. It is true that the wife is doing business of decoration with the help of labourers, but she has also stated that net profit was reduced by 5 to 6 per cent per annum because of the death of her husband. However, I find that multiplier of 18, as rightly argued by the counsel for appellants Mr.Hegade, should be applied in an accident in respect of a death in 22 to 25 years age. If Daulat was 30 to 32 years of age, then multiplier of 14 could have been proper in the circumstances. Rs.1,200/-, as taken by the tribunal, per month's contribution by Daulat appears to be proper and, therefore, compensation amount comes to Rs.1,200/- X 12 X 14 = Rs.2,01,600/-. I find that once the compensation is awarded, there was no necessity to award Rs.25,000/- towards loss of business. Compensation of Rs.3,000/- towards ambulance expenses and Rs.5,000/- as consortium are proper in the circumstances. Therefore, total compensation would come to Rs.2,01,600/- + Rs.3,000/- + Rs.5,000/- = Rs.2,09,600/-.

13. So far as interest part is concerned, the learned AGP relied upon the judgment of Supreme Court reported in **2001 ACJ 428 [Kaushnuma Begum and others v. New India Assurance Co. Ltd. and others]** wherein it has been held by the Supreme Court that with a change in economy the banks have lowered the rates of interest on fixed deposits. In that case also earlier 12% interest was awarded by the tribunal but the Supreme Court reduced it to 9%. In view of this judgment of the Supreme Court, the rate of interest has to be reduced and it should be 9% p.a. Hence the order:_-

:ORDER:

Appeal is partly allowed.

Compensation awarded to the claimants at Rs.2,92,200/- is reduced to Rs.2,09,600/- with costs before the tribunal.

No order as to costs of this appeal.

Amount of Rs.2,09,660/- will carry interest at the rate of 9_% p.a.

[D.G.DESHPANDE]

11/04/2005 JUDGE.